

HB 413

CREATE OSHA LAWS APPLICABLE TO PRIVATE EMPLOYERS

BY REQUEST OF THE MONTANA DEPARTMENT OF LABOR & INDUSTRY

SPONSOR – REP. CHUCK HUNTER HD 83

EXHIBIT 7
DATE 2/11/2015
HB 413 CONTACT _____

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OVERVIEW

HB 413 creates the Montana Private Sector Occupational Safety and Health Act and **enables** the Department to work with Federal OSHA in development of an operational plan that transfers the compliance function from federal to state jurisdiction. **This is the first step in the process and is required by Federal OSHA in order for their participation in the process.** Current law already provides for a Public Sector Occupational Safety and Health Act that is administered by the Department.

The Labor Management Advisory Council on Workers' Compensation (LMAC), which is made up of five employer representatives and five worker representatives and chaired by Lt. Governor Angela McLean, first discussed a state OSHA plan last spring. LMAC was seeking an initiative or strategy that would address the number one cost driver in Montana's workers' compensation system - Montana's high injury rates. The National Council on Compensation Insurance (NCCI) estimates that our lost time accidents are 40% higher than the countrywide average. If we could reduce lost time accidents to the countrywide average, we would save about \$115 million in loss costs - the cost of benefits paid on those injuries.

Since 1993 when the Montana Safety Culture Act was passed, employers, workers, insurers, and legislators have talked about the need to change our safety culture and reduce our work related injuries. There hasn't been much progress in 20 years. Our State has had a poor injury record for many years; ranking 1st or 2nd worst in the nation by the Bureau of Labor Statistics. Montana is now ranked 4th in the nation for high incident rates.

It is a myth that Montana has so many injuries because of the mining, timber, or just hazardous industries; however, our record is generally poor across most industries. As a result we hurt more people and pay more in workers' compensation insurance. A private sector State OSHA program gives Montana local control over the OSHA program and a tool to focus on what's happening in Montana to better address this problem.

SUMMARY OF CHANGES OR ACTUAL AMENDMENT LANGUAGE

Section 1 – Pgs. 1 – Creates the MT Private Sector Occupational Safety and Health Act for the purpose of allowing the State Department of Labor & Industry to take over the compliance functions and transferring the jurisdiction from the Federal US Department of Labor (DOL) to the State DLI to administer and enforce the Federal Occupational Safety and Health Act of 1970.

Section 2 – Pgs. 1-2 – Defines the terms used in the Private Sector Occupational Safety and Health Act.

Section 3 – Pgs. 2-3 – Provides the authority for the department to administer and enforce the provisions of the Act. Provides for education, research, and development of a safety program; provides funding for the activities from the Workers' Compensation Administration Fund; and requires the Governor to certify to the Secretary of State the date the federal administration approves the operational status agreement with the state to implement enforcement. **The department cannot enforce any of the Act until the Governor certifies that Montana and the federal government have an agreement transferring enforcement responsibility to Montana.**

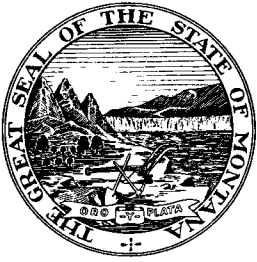
Section 4 – Pg. 3 – Provides that the rules adopted pursuant to this act apply to all private sector employers and it excludes those Montana public sector employers that are subject to Title 50, and also excludes the federal government, and federally or state recognized tribal governments.

Section 5 – Pgs. 3-4 – Requires private sector employers to furnish safe workplaces, adopt safe work practices, take appropriate action to protect the safety of workers, and comply with the safety and health standards of the Act. Also requires all employees to comply with the safety rules at work.

Section 6 – Pgs. 4-5 – Requires the department to adopt by administrative rules the safety and health regulations of the federal administration and adopt rules to require effective implementation by employers of the MT Safety Culture Act. Provides the department may adopt other evidence-based standards that are not inconsistent with federal standards and other rules necessary to implement the Act such as temporary variances of the standards; provides that rule proposals and amendments cannot be completed without consultation with and advice from the Safety Advisory Council provided in Section 7 of the bill.



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SUMMARY OF CHANGES OR ACTUAL AMENDMENT LANGUAGE *CONTINUED...*

Section 7 – Pgs. 5-6 – Provides for a Safety advisory council for the purpose of assisting the department with the application and implementation of the Act; provides for a 12 member council comprised of 2 members of the legislature selected by the leaders of the house and senate, 3 representatives of workers, plus safety professionals and a representative of the Department of Commerce and the Department of Labor and Industry, all appointed by the Governor; terms of 3 years, and allocated to the department for administrative purposes and compensated pursuant to Title 2, Chapter 15.

Section 8 – Pg. 6 – Provides employer reporting requirements for reporting injuries and illnesses to the Department and allows a First Report of Injury currently used in the system to satisfy reporting.

Section 9 – Pgs. 6-7 – Allows compliance inspections of private employer workplaces without notice on a periodic basis, as a result of a complaint or investigation of an injury report or following the issuance of a citation. Allows for safety consultation upon request of the employer and clarifies the department may not unreasonably interfere with the employers operation.

Section 10 – Pg. 7 – Allows the department to apply to any district court for an inspection warrant and allows the district court to issue the warrant upon a demonstration of cause; and allows the department to request law enforcement assistance if appropriate to peaceably enter an employer's property pursuant to an inspection warrant.

Section 11 – Pgs. 7-9 – Provides the process and requirements for inspections. When an inspection is performed under Section 9 of this bill, the department shall issue a written report that details violations of standard. The report is provided to the employer and is posted in the workplace. If the violations result in a citation and penalty, a written citation is required. The penalty for each violation that was not committed purposely or knowingly may not exceed \$7,000. Penalties for violations committed purposely or knowingly may not exceed \$70,000. The department may waive or reduce a penalty if the violation is timely corrected. The penalties are deposited in the workers' compensation administration fund but may only be used for employer or employee education purposes, not for additional compliance efforts. The employer may appeal the citation and penalty through a contested case hearing. The terms "purposely" and "knowingly" have the meaning defined in Montana criminal code.

Section 12 – Pg. 9 – An employer may seek judicial review after a contested case hearing.

Section 13 – Pg. 9 – Prohibits an employer from retaliation against an employee who files a complaint, cooperates with an investigation, or testifies in any case. An employee may file for relief as provided for in Title 49, Chapter 2, Human Rights Commission.

Section 14 – Pgs. 9-10 – The department shall order an employer to stop work if the conditions or operations constitute a violation of a standard that poses immediate or substantial risk of serious bodily injury or death. The temporary stop work-order must be in writing and must be posted at the workplace. The order is effective for 72 hours unless corrected or stayed by a district court. The term "serious bodily injury" has the same meaning as provided in Montana criminal code.

Section 15 – Pgs. 10-11 – Provides that the state may institute and maintain in the name of the state an action for injunctive relief to restrain an employer from engaging in activity under a work-stop order or to require compliance with this act.

Section 16 – Pg. 11 – Trade secrets of an employer are protected.

Section 17 – Pg. 11 – The department may provide onsite safety consultations to employers upon request.

Section 18 – Pg. 11 – The costs of administering and enforcing this act are funded by the workers' compensation assessment.

Section 19 – Pg. 11 – The Wrongful Discharge Act does not apply to an employee engaging in any safety-related protected activity provided in Section 13 of this bill.

Section 20 – Pgs. 12-16 – Provides for penalties and federal funds received pursuant to this act be deposited in the workers' compensation administration fund and requires penalties collected to be used only for safety education and outreach functions. Penalties may not be expended for safety inspection or enforcement functions.

Section 21 – Pg. 16 – Prohibits retaliation by an employer against an employee engaging in a protected activity provided for in section 13 of this bill.

Section 22 – Pg. 16 – Saving Clause

Section 23 – Pg. 16 – Severability

Section 24 – Pg. 16 – Codifies this act in Title 50.

Section 25 – Pg. 16 – Effective July 1, 2015.



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